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Dear Dan,

**Uswitch response to Ofgem statutory consultation on the removing the Ban on Acquisition-only Tariffs (BAT)**

We welcome Ofgem's minded-to position to remove the BAT from October 2024. As outlined in our previous response, we do not believe there is any merit in retaining the BAT as it has neither improved the stability of the energy market nor consumer prices. There are three key reasons why BAT should end in October 2024.

First, the intention of the BAT was a short-term measure to force a level of retail market stability in the face of wider market circumstances and regulatory policy interventions. The reduction in relative volatility in the wholesale market means that, even if there ever was, there is no longer a need for the BAT and as a matter of good regulatory practice it should now be removed as soon as possible.

As wholesale prices have stabilised, suppliers should be incentivised to compete on quality and price. The BAT discourages this, increasing the likelihood that falling wholesale prices are not passed onto households. At a time when consumers should be presented with a greater choice of tariffs, the BAT removes incentives for suppliers to compete, leading to households paying more than they should.

Second, as we have detailed in our response to Ofgem's earlier consultation, the BAT has led to higher bills for households. Whilst it was introduced in an attempt to protect the financial stability of the remaining retail energy suppliers, the reality is that it has led to higher prices for households at a time when energy bills are already high, as demonstrated by Ofgem's own analysis. This is because it makes it less likely that cheaper tariffs will be available to those who would benefit most from them.

Third, the BAT must not be confused as a measure to constrain consumer prices. The default tariff price cap is Ofgem's primary measure to manage charges disengaged customers could face. The BAT can only reduce the chances of the market offering prices below this cap. While there is rightly a

debate around the future of retail price protection and the default tariff cap's effectiveness as part of that, there must be a full policy process around this debate and continuing short-term measures that are no longer required in the meantime would not be appropriate.

Regarding the disbenefits mentioned in the consultation, we believe they are unlikely to occur or have any significant negative impacts on the market. The benefits of removing the BAT far outweigh any potential drawbacks.

The reduced amount of time to assess the BAT's impact as a standalone measure is not a reason to keep it in place. The burden of proof should be on Ofgem to prove that it should be retained for longer. It would clearly not be appropriate by way of regulatory process to keep a temporary measure in place for longer on the off chance that it will be useful as a standalone measure.

Additionally, we agree with the call for evidence that the BAT is highly unlikely to enhance supplier resilience or improve market-wide stability. The BAT is unnecessary for creating a stable energy market. Given its negative impacts on tariff prices and quality, it is an inappropriate mechanism for trying to achieve this. This is due to its significant impacts on the level of risk for suppliers, creating a market where they lack incentives to improve their offering to retain or attract customers.

Ofgem has taken forward a number of other measures to ensure that energy suppliers are financially stable and sustainable. Tightening the requirements on new suppliers entering the market and strengthening the rules on financial prudence are both more effective ways of improving the stability of the market and have fewer unintended consequences for both suppliers and consumers.

Finally, in terms of reduced certainty for suppliers when setting tariffs in the lead-up to minimum capital requirements formally taking effect from March 31, 2025, we believe that Ofgem's minded-to position on BAT has been clear and therefore a prudently run supplier will already have been planning for BAT removal on 1 October as the most likely scenario.

Good regulatory process should always be followed to ensure suppliers have an ability to manage regulatory changes in an appropriate way. However, if we are to have a competitive retail energy market, suppliers cannot not be entitled to near-complete certainty on the future of market dynamics or how their competitors might respond - in fact it is essential for a properly functioning market that there is a threat consumers will move to a different provider that offers something better, acting as a vital incentive for the incumbents to do better for their customers to retain them.

The existence of the BAT provides certainty for suppliers at the expense of better deals for consumers. It has led to a market in which suppliers have virtually no fear that they will lose their customers, meaning that they do not feel that they need to offer the best possible product or prices to the customers they have now. We do not believe it is a significant disadvantage to have the risk incentive transferred back onto the suppliers.

We respond to Ofgem's specific consultation questions in Annex 1 below.

Yours sincerely

A handwritten signature in blue ink that reads 'Richard Neudegg'. The signature is fluid and cursive, with the first name 'Richard' and last name 'Neudegg' clearly distinguishable.

Richard Neudegg  
Director of Regulatory Affairs

## **Annex 1 – Response to consultation questions**

### **1) Do you agree with our minded-to position that Ofgem should modify supply standard licence condition SLC 22B to remove the BAT from 1 October 2024?**

Yes.

### **2) If you consider that the BAT should remain in force until 31 March 2025, do you think the market wide derogation from SLC 22B for fixed retention tariffs should also continue until 31 March 2025?**

N/A

### **3) Do you have any comments on the analysis presented in section 2?**

In terms of the effects of removing the BAT on financial resilience, we agree with the conclusion that it is unlikely to be a material driver of supplier sustainability. As outlined above, Ofgem's measures on financial sustainability and supplier resilience are more effective tools for preventing widespread supplier failure. For example, imposing strict entry requirements for new market participants and reinforcing financial prudence regulations are more effective ways to bolster market stability without causing the unintended consequences for customers associated with the BAT.

Alongside this, the BAT has made the market less stable for households. It prevented falling wholesale prices from being passed on to consumers, slowing the market's recovery by preventing bills from dropping as quickly as they should have, thereby hindering the return of competition to the market. We also believe it has hindered consumers from securing fixed deals at reasonable prices by limiting available offers, and therefore increasing exposure to the regular price changes under the price cap.

Additionally, we agree that the BAT creates barriers to supplier innovation, harming competition and raising prices for households. The BAT limits the range and price of tariffs that suppliers can offer, creating a market in which the overwhelming majority of households are covered by the price cap. This means that no meaningful competition takes place, as suppliers cannot offer new and better value tariffs. The BAT, alongside other regulatory measures, disincentivises suppliers to innovate or meaningfully compete.

As a regulator, Ofgem should not aspire to create or oversee a market in which firms are frozen out of competition and innovation. The logical end point of the kind of market that the current regulatory settlement is creating is a small number of incumbents left to serve their customer bases at an unjustifiably high cost. This is a missed opportunity to encourage innovation amongst the suppliers that would otherwise have the capital to further invest in the market, and it is ultimately consumers who will lose out in the form of higher bills for a lower quality product.

With regards to giving suppliers more time to factor the BAT's absence into their hedging strategies, we agree that the timing aligns well with the upcoming hedging window for the October 2024 price cap period. However, the issue is wider than this – as highlighted above, the market has for too long reduced the risk for suppliers, giving them no incentive to compete on price or quality of service, with consumers suffering through higher household bills.

Additionally, if the concern is that suppliers have already hedged on the assumption that they can charge higher prices due to the BAT, then this underscores the need to remove the measure. Ofgem should expect suppliers to behave prudential considering their hedging positions but it should not shield them to fair competition as a device to support consumers receiving a fair price and quality of service.

On the so-called 'loyalty penalty' benefits from the BAT, continuing the measure would have a negative effect on both active and inactive consumers by driving up prices and preventing genuine competition. With cheaper tariffs unavailable, the impacts on active customers are obvious – they will not have a meaningful opportunity to shop around for the best deal possible because there is no genuine competition in the market. This means that they face a serious risk of paying higher bills for a lower quality service for as long as the BAT remains in operation.

While inactive consumers may appear to benefit on the surface, the reality is that the BAT reduces the likelihood of existing customers switching away from their current suppliers. In turn suppliers are not incentivised to provide better deals to existing customers, artificially inflating prices throughout the market, including for inactive customers in the market.

The price cap is designed to ensure that entirely inactive customers are being offered fair pricing – the removal of the BAT would not change their circumstances. Whilst there is a wider debate on the future of price regulation to protect inactive customers in the most efficient way, this is not relevant to the question of whether the BAT should be retained, because it does not make a meaningful contribution to protecting inactive consumers from higher prices.

#### **4) Do you have any comments on the draft impact assessment presented in section 3?**

##### *Market-wide stability*

As outlined above, we do not believe that the BAT has a significant impact on market-wide stability, and agree that as it was intended as a short-term intervention to tackle extreme market volatility it should be removed. Imposing strict entry requirements for new market participants and reinforcing financial prudence regulations are more effective ways to bolster market stability without causing the unintended consequences for customers associated with the BAT.

##### *Overall impacts of BAT removal*

As is noted, the removal of the BAT may encourage suppliers to offer more fixed tariffs. We view this as a positive development. As wholesale prices continue to fall, an increased number of fixed term



deals will allow consumers to get longer-term and lower-priced deals, driving down their energy costs.

#### *Impact on consumer trust*

We disagree that the removal of the BAT will decrease consumer trust through knowing that they can access any deal. Consumer trust will increase if they feel that suppliers are offering more competitive prices and quality of service – something that the BAT prevents from happening by providing no incentive for suppliers to win new business through innovation and improved quality.

#### *Impact on competition*

We agree that the removal of the BAT would generate further price competition, and greater incentives for suppliers to compete and for individuals to switch, as outlined above.

#### *Distributional considerations*

We do not believe that those with the age and disability protected characteristics would suffer greater disbenefit as a result of any decision to remove the BAT, as protecting vulnerable consumers was never the intention or the outcome of the BAT. Like the price cap, it is a blunt instrument that is not sufficiently targeted to those in need. Rather than protecting the most vulnerable and allowing competition to drive down prices in the remainder of the market, it stifles competition and increases prices across the market.